IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Crl.MC.No. 825 of 2001

CC (CP.15/2000 of JUDL.MAGISTRATE OF FIRST CLASS COURT-III, PALAKKAD
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PETITIONER/2ND ACCUSED:

K.G.KURUVILLA, KAYYALAKKAKOM,
KURAVANKONAM, TRIVANDRUM

BY ADV. SRI.V.G.ARUN

RESPONDENTS/COMPLAINANT AND STATE:

1. V.K.SREENIVASAN, 35/2000,
   KALATHIPARAMBU ROAD, ERNAKULAM

2. STATE OF KERALA
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA
   ERNAKULAM

BY ADV. SRI.T.N.HAREENDRAN
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28/11/2007, ALONG WITH CRMC NO. 2308 OF 2001 & CRMC NO. 2398 OF 2001, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 825 of 2001(C)

ORDER ON C.M.P.NO.691 OF 2001
IN
CRL.M.C.NO.825 OF 2001

Dismissed

SD/-
A.K.BASHEER, JUDGE

28.11.07

A.K.BASHEER, J.

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Crl.M.C.Nos.825, 2308 & 2398 OF 2001

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Dated this the 28th day of November 2007

ORDER

Petitioners who have been arraigned as accused Nos.2, 6 and 7 in C.C.(CP)No.15/2000 pending on the file of the Judicial Magistrate of First Class-III, Palakkad have preferred this petition under Section 482 of the Code of Criminal Procedure seeking to quash the above proceedings pending against them.

2. It is not in dispute that respondent no.1 has instituted the above proceedings as a protest complaint. The complaint filed by him earlier was referred by the court to the police for investigation under Section 156(3) of the Code. Annexure-4 is stated to be the copy of the said complaint filed by him in December 1998.

3. It is beyond controversy that the police had, after conducting investigation, referred the case as false as revealed from Annexure-5. The learned Magistrate had accepted the said report and closed the proceedings by order dated July 31, 1999. It is admitted by the complainant that he had received

refer notice from the police. However, it is contended by him that he was not aware of Annexure-5 proceedings before the court in this regard. Anyhow, the complainant had filed the protest complaint, a copy of which is on record as Annexure-6 on July 1, 1999. The learned Magistrate had, after recording the sworn statements of the complainant and three other witnesses, taken cognizance of the offences alleged in the complaint under Sections 340, 451, 143, 148, 120B, 380, 382, 506(2) IPC and issued process to them.

4. Learned counsel for the petitioners/accused and the respondent/complainant were heard.

5. It is submitted by learned counsel on either side that civil litigations between the parties, with regard to the right of possession and management of the property having a total extent of about 1300 acres, are pending before various civil courts in Palakkad. But learned counsel for the petitioners has invited my attention to the refer report submitted by the police, after conducting investigation, under Section 156(3) of the Code to highlight the fact that the alleged incident was a

fabricated story, since the investigating officer had recorded that the property in question was in the custody of the Kerala Forest Development Corporation with effect from October 20, 1998 pursuant to an order issued by the District Court, Palakkad in CMA 2/98. It is also the specific case of the petitioners that the civil court had issued an order of injunction in their favour.

6. The counsel on either side do not appear to be well informed about the present status of either the civil suits or the appeals, which are stated to be pending before various courts. Anyhow, the short question that arises for consideration in these petitions is whether any interference is warranted with the order of the learned Magistrate issuing process to the petitioners and the other co-accused. There is considerable force in the contention raised by the petitioners that the learned Magistrate has not apparently adverted to the various aspects of the case in the back drop of the pending civil disputes between the parties. Obviously, the entire materials were not placed before the learned Magistrate along with the complaint.

But still it would have been more prudent and appropriate, if the learned Magistrate had taken a little more care before issuing process especially since the police had already filed a refer report treating the earlier complaint as false after conducting the investigation under Section 156(3). The refer report also had specifically mentioned about the pending civil disputes between the parties.

7. In this connection, my attention has been invited to a decision of their Lordships of the Supreme Court in **Mahesh Chand V. B.Janardhan Reddy and another (2003 (1) SCC 734)** in which their Lordships held that "a second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced."

Having regard to the peculiar nature of the case on hand and also the fact that several proceedings are admittedly pending before the civil court between the parties with regard to the rival claim for ownership and possession, I am satisfied that this is a fit case in which the learned Magistrate has to be directed to take a fresh look at the question whether process has to be issued to the accused. Therefore, the order of the learned Magistrate issuing process to the accused is quashed. The learned Magistrate shall reconsider the matter and take an appropriate fresh decision keeping in view the observations made above. Under normal circumstances, the accused may not be entitled to be heard at the stage of Section 202 enquiry under the Code. The question whether the process has to be issued or not, after such an enquiry as provided under the Code, is entirely within the powers of the learned Magistrate. But in the peculiar facts and circumstances of this case, I am satisfied that it will be just and proper if the petitioners are also afforded opportunity to be heard enabling them to assist the court to get a clear perspective of the real nature of the dispute pending

between the parties. It is reiterated that the opportunity of hearing to the petitioners is limited to that extent only. These petitions are disposed of with a direction to the court below to reconsider the matter and decide the question afresh as to whether process has to be issued to the accused on Annexure-6 complaint filed by the respondent herein. The objections that may be raised by the petitioners shall be considered in the light of the observations made above. The parties shall appear before the court below on January 15, 2008. The lower court records shall be sent back by the registry to the trial court forthwith.

(A.K.BASHEER, JUDGE)

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A.K.BASHEER, J.

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Crl.M.C.Nos.825, 2308 & 2398 OF 2001
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ORDER

Dated, 28th Nov. 2007